

MANDATE

05-1174
USCIMA
Young

United States Court of Appeals For the First Circuit

No. 05-1965

JAMES GOMES,
Petitioner, Appellant,
v.

UNITED STATES,
Respondent, Appellee.

Before

Lynch, Circuit Judge,
Campbell, Senior Circuit Judge,
and Lipez, Circuit Judge,

JUDGMENT

Entered: October 31, 2005

Having carefully reviewed the record in this case, we deny the request for a certificate of appealability.

We add only the following.

Given that the evidence of petitioner's guilt was not overwhelming, petitioner's trial counsel was not constitutionally ineffective in advising petitioner to proceed to trial.

Even if counsel erred in not asking that the jury be polled, not only has petitioner failed to show any prejudice from this failure but polling the jury is not ordinarily considered a right of constitutional dimension nor a basis for habeas relief. See Cabberiza v. Moore, 217 F.3d 1329, 1336-37 (11th Cir. 2000) (citing cases).

Finally, petitioner has failed to provide any support for his claim that his indictment was obtained on the basis of perjured testimony. In addition, since he was properly convicted by a petit jury where he was afforded an opportunity to cross-examine the alleged perjurer, that conviction cured any alleged error before the grand jury. United States v. Valencia-Lucena, 925 F.2d 506, 511 (1st Cir. 1991).

Therefore, the request for a certificate of appealability is denied and the appeal is dismissed.

By the Court:

Richard Cushing Donovan, Clerk.

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 1/9/06

MARGARET CARTER

By: _____
Chief Deputy Clerk.

[cc: Dina M. Chaitowitz, AUSA, James Gomes]